Docket No.: 36488-167637
(PATENT)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Bentley et al.

Art Unit: 3621

Application No: 09/982,852

Examiner: C. O. Sherr

Confirmation No: 7743

Filed: October 22, 2001

Atty. Docket No: 36488-167637

Customer No:

For: SYSTEM, METHOD AND COMPUTER
PROGRAM PRODUCT FOR A FAIL-
SAFE START-UP MECHANISM FOR
CLIENTS OF A LICENSE SERVER

26694
PATENT TRADEMARK OFFICE

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.41(a)(1), this brief is filed within two months of the Examiner's Answer filed in this case on June 11, 2007.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37(c) and M.P.E.P. § 1208:

I.	Status of Claims
II.	Grounds of Rejection to be Reviewed on Appeal
III.	Argument

I.   STATUS OF CLAIMS

There are 24 claims pending in application.

Claims 1-4 and 7-24 have been finally rejected in the Office Action of May 4, 2006. Claims 1-4 and 7-24 are being appealed. Claims 5 and 6 have been allowed.

II.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether the Examiner has established that claims 1-4 and 7-24 are obvious over U.S. Patent Number 5,671,412 to Christiano.

III.   ARGUMENT

In addition to Applicants' Appeal Brief, Applicants wish to further discuss the Examiner's assertion, in the Examiner's Answer on page 13, that Christiano col. 17, lines 28-30, teaches accessing the software application in the event that the license management system is unable to communicate with the client workstation over the network. Applicants respectfully disagree.

The cited passage of Christiano explicitly states that a "fail safe license can be **checked out** regardless of the type of error" col. 17, lines 28-30 (emphasis added). "Checking out" a license requires that the server be available to issue the license, i.e. there must be a server from which to check out the license. The fail safe mode of Christiano requires communication between the client and the license server. Figures 3-9 of Christiano, and the accompanying description which includes the cited passage, all describe a process from the perspective of the license server 16 of Christiano. Please see, e.g. Christiano, col. 9, lines 65-66. The cited passage above relates to Figure 7, block 132 of Christiano, which describes entry of a license item in a license record in the server's internal license database. The failsafe indicator in the license item indicates to the license server that a license may be issued even if no licenses are available. Please see Christiano col. 17, lines 16-19; col. 17, lines 55-57 (Figure 8 shows the license server processing a license request) and col. 18, lines 33-37 (the server tells the client that the product can still be used).

As described at column 18, lines 22-44 of Christiano, if a license is not available for the requesting client, the process in the license management server checks whether a fail safe license is
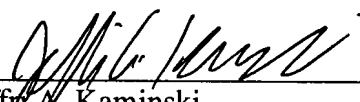
requested per step 154. The license management system checks if a fail safe license is appropriate and if so, the "fail safe status" is output to the requesting client computer, per step 158. Please see column 18, lines 33-35. Thus, Christiano processes failsafe requests in the server, and requires communication of the failsafe license from the license management system to the requesting client computer system.

Christiano makes no provision to allow a client access to the license software product in the event that there is no communication between the license management server and the client. In fact, Figure 15 of Christiano illustrates that if no server is found on the network by the requesting client in block 286, then the connection attempts ends in block 288 and no further action is taken. Thus, if there is no communication between the requesting client and the license management system in Christiano, the client cannot access the licensed software product. This is the direct opposite of the claimed invention, for example as recited in independent claims 1, 16, and 22.

In view of the above discussion, it is clear that the cited reference fails to teach or suggest the features recited in the claims. Each of the dependent claims is allowable for at least the reasons as being dependent from an allowable independent claim. For these reasons, the withdrawal of the rejections of claims 1-4 and 7-24 is respectfully requested.

Dated: _8/10/07_   Respectfully submitted,

By _[signature]_
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